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Mr. William F. Caton  
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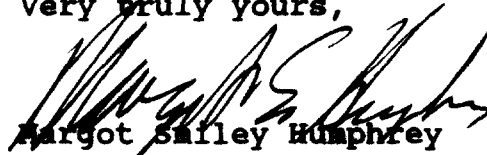
Re: CC Docket No. 94-1

Dear Mr. Caton:

Transmitted herewith, on behalf of the National Rural Telecom Association, are an original and nine (9) copies of its comments in the above-referenced proceeding.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

  
Margot Smiley Humphrey



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In the Matter of

Price Cap Performance Review  
for Local Exchange Carriers

CC Docket No. 94-1

COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION

The National Rural Telecom Association (NRTA), by its attorneys, files these comments in response to the Commission's February 16, 1994 Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.<sup>1</sup>

NRTA is an association of approximately 300 local exchange carriers (LECs) that borrow under Rural Electrification Administration (REA) and Rural Telephone Bank (RTB) programs. These loan programs are designed to help finance construction, improvement and expansion of telephone facilities "to assure the availability of adequate telephone service to the widest practicable number of rural users of such service." 7 U.S.C. § 921.

NRTA agrees that a primary goal of any action taken in this proceeding reviewing price caps (or any other proceeding) should be "promoting universal service to all geographic areas and of

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<sup>1</sup> Price Cap Performance Review for Local Exchange Carriers. Notice of Proposed Rulemaking, CC Docket No. 94-1, FCC 94-10 (released February 16, 1994).

comparable type and quality for all Americans at affordable prices."<sup>2</sup> In particular, the goal of promoting nationwide infrastructure development and comparable rural and urban type and quality of service should shape the Commission's policy on sales and swaps of exchanges.

Facilitating sales of rural exchanges by price cap LECs is an effective way to spur rural infrastructure development. The Commission correctly observes (NPRM, ¶ 88) that acquisitions from price cap LECs by small and rural LECs can

"promote better infrastructure development by placing exchanges in control of another LEC whose business plan makes it more committed to developing improved service in the exchange,"

as well as improve efficiency and service quality. Information compiled by the National Exchange Carrier Association (NECA) provides clear evidence that the small and rural LECs that typify participants in NECA's traffic sensitive tariff have an exemplary record of modernizing their rural service areas.<sup>3</sup>

Factors contributing to small and rural LECs' ability to follow through on their commitment to an advancing rural infrastructure include their willingness, unlike many of the largest companies, to borrow under REA and RTB programs with area wide coverage and other obligations and restrictions. Many are also helped by the existing support mechanisms, including the Univer-

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<sup>2</sup> NPRM at ¶ 34 (footnote omitted); see also ¶ 36, Baseline Issue 16 (seeking comment about ensuring geographic availability and "equal" service type and quality for all Americans).

<sup>3</sup> NECA, Building the Telecommunications Infrastructure in Rural America: Achievements Toward the Promise (1994).

sal Service Fund (USF) and Dial Equipment Minutes (DEM) weighting.<sup>4</sup>

NRTA is pleased that the Commission recognizes that transferring ownership of rural exchanges to LECs that specialize in rural service can have substantial benefits. There are numerous rural exchanges where customers would benefit from modernization that could bring new medical and educational services, economic renewal and access to information resources. The recent sales and swaps of often-unimproved exchanges by price cap LECs indicate that network upgrades are not ubiquitously available. Consequently, universal service "of comparable type and quality" is not available for "all Americans," let alone available "at affordable prices." The age of some of the facilities demonstrates that this lag in rural exchange development by the selling price cap LECs was already occurring under rate of return regulation. However, the state of development of the exchanges offered for sale also shows that price cap regulation has not supplied new incentives to upgrade rural service, notwithstanding the Commission's predictions in adopting the price caps regime.<sup>5</sup>

NRTA is concerned that the NPRM may signal the Commission's intention to curtail high cost support or shift the burden in a way that would inhibit sales and swaps of exchanges and thus

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<sup>4</sup> Small and rural LECs need adequate support to continue to evolve their networks to make new technology and services available.

<sup>5</sup> See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd. 6786, 6827 (1993).

frustrate increases in network efficiency and benefits for rural customers.

Although the Commission says waivers should be available for transactions that "make economic sense," it nevertheless expresses misgivings about several potential results of such sales and swaps of exchanges: possible increases in access rates, increased high cost support from the Universal Service Fund (USF) and triple DEM weighting, and possible incentives to postpone modernization of rural price cap exchanges in anticipation of sale to a rate of return LEC. To avoid "unintended windfalls" and "artificially increased" support, the Commission plans to consider whether to change its current policies or adopt restrictive waiver standards. From the perspective of rate of return LECs that acquire rural exchanges and the customers of the exchanges, it would be unconscionable to treat upgraded service due to transfer to a serving LEC committed to a high quality, evolving rural infrastructure as a "windfall" or an "artificial" increase in support.

NRTA strongly urges the Commission not to place any additional obstacles in the way of transactions that will benefit the rural customers of price cap LECs.<sup>6</sup> The Commission should not limit or deny support mechanisms to acquired exchanges because

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<sup>6</sup> NRTA does not have sufficient information on how sales and swaps affect price cap LECs' operations to comment on whether an adjustment to some price cap factor may be appropriate. However, the Commission should not adopt requirements that would discourage a price cap LEC from selling unimproved rural exchanges without assuring that the affected rural customers are not left with second or third class service.

that would discriminate against the customers served by those exchanges and the acquiring LEC. The purpose of universal service mechanisms is to provide customers with evolving services and facilities at affordable prices. The interests of customers should not be sacrificed because of who owns the serving facilities.

The question of whether the universal service support mechanisms are properly constructed and targeted is beyond the scope of this proceeding. The Commission has already stated that it will reexamine universal service support in a separate proceeding. Support issues are also under scrutiny under National Association of Regulatory Utility Commissions and Federal-State Joint Board processes. In addition, both H.R. 3636 and S.1822, bills pending before Congress, would profoundly change universal service support mechanisms. Transferred exchanges and their purchasing LECs should receive support pursuant to Commission-prescribed mechanisms -- as they exist today or as they may be modified due to pending regulatory or legislative review.

It would be unduly harsh to force price cap LECs that sell exchanges to underwrite differences in rates and support under current and future competitive conditions. To be sure, when the Commission allowed LECs to withdraw from NECA tariffs by making participation optional in 1987, it expected large depooling carriers to maintain reasonable rates for customers throughout their service areas. Since then, however, the Commission has changed its policies toward competition and concurrently permit-

ted access charge deaveraging.<sup>7</sup>

The policy that would be most consistent with infrastructure development would be to encourage sales of exchanges to rural LECs by price cap companies and make high cost support and other support and allocation policies available to the purchaser under the duly prescribed mechanisms. If the cost of supporting high cost area infrastructure development and affordable rates increases, the Commission should recognize that as a cost of protecting and enhancing universal service, while encouraging competition.<sup>8</sup>

The Commission should again consider allowing a rate of return LEC to acquire one or more exchanges of a prices caps LEC and return them to rate of return regulation without a waiver, as long as the acquired exchanges are smaller (i.e. have fewer access lines) than the acquiring LEC. It should seek to advance consumer interests in acting upon study area waiver requests, rather than bowing to pressures to prevent universal service support from increasing. The Commission should also allow purchasing LECs to obtain additional Universal Service Fund support without bringing into play the temporary cap and indexing

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<sup>7</sup> Expanded Interconnection With Local Telephone Company Facilities, CC Docket No. 91-141, 7 FCC Rcd 7369, (1992) modified on recon., 8 FCC Rcd 127 (1992), modified, 8 FCC Rcd 7341 (1993), recon. pending and appeal pending sub nom. Bell Atlantic Corp. v. FCC, No. 92-1619 (D.C. Cir., filed Nov. 25, 1992); see also CC Docket No. 91-141, 8 FCC Rcd 7374 (1993).

<sup>8</sup> See J. Panzar and S. Wildman, Competition in the Local Exchange: Appropriate Policies to Maintain Universal Service in Rural Areas.

mechanism. The growth of the USF when high cost properties are purchased should not come at the expense of less support for other recipients.

If the selling price cap LEC became obligated to make exogenous cost deductions for any increases in the purchasing LEC's USF or CCL rates, sales of exchanges could cease or decline. Rural customers would be penalized, since it is not likely that price cap LECs would upgrade rural network capabilities and services if they could not recover the additional costs of widespread rural upgrades through higher rates. As increasing access competition and emerging local competition lead to more density- and cost-based deaveraging by LECs with both urban and rural service territory, rural consumers' rates would continue to rise, while their service and infrastructure development would decline. To equalize the burden on competing service providers, the Commission should concentrate on expanding the obligation to contribute towards universal service to cover all providers that do not have a universal service obligation.

### Conclusion

The Commission should, as the NPRM states, promote universal service for all geographic areas and of comparable type and quality for all customers.

To do so, the Commission should encourage price cap LECs to sell rural exchanges to rural LECs and provide rural customers with the full benefits of all universal service support mechanisms that are in effect. Any changes to support mechanisms





should be considered in the pending or announced proceedings  
dealing with universal service issues.

Respectfully submitted,

NATIONAL RURAL TELECOM ASSOCIATION

By:

  
s. Margot Smiley Humphrey  
/s/ Margot Smiley Humphrey 

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May 9, 1994

**CERTIFICATE OF SERVICE**

I, Richard D. Massie, a secretary in the law firm of Koteen & Naftalin, do hereby certify that I have this date caused the foregoing to be delivered by hand, to the following:

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Common Carrier Bureau  
1919 M Street, N.W., Room 518  
Washington, D.C. 20554

\*International Transcription Service, Inc.  
1919 M Street, N.W., Room 246  
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By: /s/   
/s/ Richard D. Massie

May 9, 1994

\*By hand delivery